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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CYNTHIA A. EMIDIO,

Plaintiff and Appellant,

v.

JOHN K. MARTIN,

Defendant and Respondent.

D054503

(Super. Ct. No. DN112643)

NO CHANGE IN JUDGMENT

THE COURT:

The opinion filed May 10, 2010, is modified as follows:

At III Legal Discussion A (slip opinion page 9), third paragraph, delete second sentence beginning with "Cynthia was represented" through *Dakota* citation ending with "212, 221-222.)"

Replace deleted text with "To the extent Cynthia is arguing the court violated her rights under *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1357, because she was not provided with an evidentiary trial that included the presentation of witnesses' testimony and the opportunity for cross-examination before the change of custody orders, her

argument is unfounded. The orders from which Cynthia has appealed are not final orders, but temporary orders pending further hearing. At the November 30, 2007 hearing, the court made interim custody orders and continued the matter. At the May 13, 2008 hearing, the court adopted the previous orders and continued the matter for review to the next hearing. Thus, the requirements for a full hearing under *Elkins v. Superior Court* do not apply."

The petition for rehearing is denied.

There is no change in the judgment.

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BENKE, Acting P. J.

Copies to: All parties